

IN THE MATTER OF:
MARY L. JONES-DURBIN,

Complainant,

and

BROTHER JAMES COURTNEY,

Respondent.

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

MARY L. JONES-DURBIN,

Complainant,

and

BROTHER JAMES COURT,

Respondent.

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CHARGE NO: 2005SF3323
EEOC NO: 21BA52015
ALS NO: S08-119

RECOMMENDED ORDER AND DECISION

This matter comes to me on Respondent's motion to dismiss the instant case due to Complainant's failure to prosecute this matter. Complainant has not filed a response to the instant motion, although she had previously sent a letter to the Commission indicating a desire to withdraw her Complaint based on her perception that she had not been treated fairly by Respondent's counsel, as well as certain individuals within the Department of Human Rights and the Commission.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On May 5, 2005, Complainant filed a Charge of Discrimination on her own behalf alleging that she was the victim of race discrimination when she was suspended at the workplace on April 29, 2005.
2. On November 8, 2005, Complainant filed an Amended Charge of Discrimination, alleging that she was demoted on September 17, 2005 and suspended on October 6, 2005 in retaliation for having previously filed a Charge of Discrimination.
3. On December 6, 2005, Complainant filed another Amended Charge of Discrimination, alleging that she had received unequal pay in October of 2005 and that she had been harassed in the workplace on account of her race.

4. On March 17, 2008, Complainant filed a *pro se* Complaint alleging that she had been the victim of racial discrimination and retaliation in the workplace.

5. On April 23, 2008, Respondent filed a motion to dismiss the instant Complaint, alleging that the Commission lacked jurisdiction over portions of her Complaint since the Department of Human Rights had issued on October 3, 2006 a Notice of Dismissal for Lack of Substantial Evidence that covered certain portions of her Charge of Discrimination and the amendments thereto.

6. On May 20, 2008, Respondent's motion to dismiss was granted without prejudice to Complainant filing an Amended Complaint to include only those portions of her Charge of Discrimination (and any amendments thereto) that were not the subject of the Department's October 3, 2006 Notice of Dismissal.

7. Complainant made two unsuccessful attempts to file a conforming Amended Complaint, and an Order was entered on October 2, 2008, which identified those portions of Complainant's latest Amended Complaint that were appropriately at issue in the instant proceeding. The Order also directed Respondent to file a responsive pleading and set forth a discovery schedule.

8. On December 1, 2008, Complainant wrote a letter to the Commission objecting to some of the questions that she was being asked by Respondent in its discovery requests. Specifically, Complainant objected to answering any information regarding her present employment, including her length of tenure and her current rate of pay, as well as any information contained on her tax returns. As to each of the requested discovery items, Complainant submitted that the information was "private," that she wanted to exercise her "right to privacy" in this matter, and that she would not be answering any of these questions. She further asserted that she had submitted "harassment" charges against Respondent's counsel.

9. On December 15, 2008, an Order was entered, which denied Complainant's request to be excused from providing information either as to her current

employer or her prior tax returns since discovery on said matters was relevant with respect to Complainant's claim for back wages. The Order, however, gave Complainant the option of refusing to answer said questions if she withdrew any back wage claim from the instant lawsuit.

10. On December 18, 2008, the Commission received a letter from Complainant indicating that she did not wish to pursue her Complaint "only" because her "human rights have not been and are not being observed." In the letter, Complainant alleged that individuals within the Department of Human Rights discriminated against her on account of her race by withholding and ignoring unspecified evidence. Complainant also stated that she believed that partiality was being given to Respondent's counsel because of his status as a lawyer, and that she did not believe that she could receive "justice and fairness" from the instant administrative law judge.

11. On December 31, 2008, Respondent filed a motion to dismiss the instant case with prejudice based upon Complainant's request to withdraw her claim.

12. Complainant has not filed a response to the motion to dismiss as of the date of the instant recommended order.

Conclusions of Law

1. A Complaint may be dismissed when a party engages in conduct that unreasonably delays or protracts proceedings. See, 56 Ill Admin Code Ch XI §5300.750(e).

2. The Complainant has unreasonably delayed proceedings by failing to participate in discovery and seeking a withdrawal of her claim.

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a complaint be dismissed where a complainant engages in conduct that unreasonably delays or protracts proceedings. (See, 56 Ill Admin Code CH XI §5300.750(e).) On review, the Commission has upheld the use of

such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, *Ramirez and Wasco Spring Company*, 40 Ill HRC Rep 266 (1988), and *Hariford and Mitsubishi Motor Manufacturing of America*, IHRC, 10629, August 16, 2000.

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay these proceedings. Specifically, Complainant indicated an unwillingness to provide relevant information with respect to her damages claim, and instead of complying with a directive to provide said information, she sent a letter stating that she now wanted to withdraw her Complaint because she believed she was being discriminated against on account of her race with respect to the processing of her discrimination claim. Yet, Complainant cites to no legal precedent that would grant her an ability to withhold relevant financial information under circumstances where she is seeking a back wage claim. Indeed, if Complainant disagreed with such a ruling, her remedy would not be to stop all efforts at prosecuting her claim and fail to file a response to Respondent's motion to dismiss. As such, her contention that she would no longer prosecute her claim renders it difficult for the Commission to take any action other than to grant her request to dismiss the case. See, for example, *Foster and Old Republic General Services, Inc.*, IHRC 5011, November 8, 1993.

Recommendation

Accordingly, I recommend that the Complaint and the underlying Charge of Discrimination of Mary L. Jones-Durbin be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 27TH DAY OF APRIL, 2009